## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

CIVIL ACTION NO. 3:19-CV-00090-KDB-DSC

MY'KA EL,	)	
Plaintiff,	)	
	)	<u>ORDER</u>
v.	)	
D DDEGTON ID	)	
R. PRESTON JR. et. al.,	)	
	)	
Defendants.	)	

**THIS MATTER** is before the Court on "Defendant's Motion to Stay Proceedings [Pursuant to Servicemembers Civil Relief Act]" (document # 42) filed September 3, 2021. No party has filed a response to the Motion. For the reasons set forth therein, the Motion will be granted.

The Servicemembers Civil Relief Act, 50 U.S.C. § 3901 to 4043, as specifically authorized by 50 U.S.C. § 3932, allows a stay to be granted to a plaintiff or defendant who "is in military service or within 90 days after termination or release from military service and has received notice of the action or proceedings." 50 U.S.C. § 3932 (a). Defendant Wilde is currently on active duty and received service of the summons by and through his counsel. Therefore, the "Servicemembers Civil Relief Act" is applicable to him.

The relevant provision provides that "at any stage before final judgement in a civil action or proceeding in which a servicemember is a party... the court may on its own motion, and shall

upon application by the servicemember, stay the action for a period of not less than 90 days..." 50

U.S.C. § 3932(b)(1). Pursuant to the Act, the following conditions must be met:

(A) A letter or other communication setting forth facts stating the manner in which current

military duty requirements affect the servicemembers ability to appear and stating a date

when the servicemember will be available to appear.

(B) A letter or communication from the servicemember's commanding officer stating that

the servicemember's current military duty prevents appearance and that military leave is

not authorized for the servicemember at the time of the letter.

50 U.S.C. § 3932(b)(2). Defendant Wilde has attached the required letters to this Motion. See

Document #42-1.

THEREFORE, the Court STAYS this case until completion of Defendant Wilde's active

military duty. Counsel for Defendant Wilde shall file notice with the Court within fourteen days

of the conclusion of Defendant Wilde's active military duty.

The Clerk is directed to send copies of this Order to pro se Plaintiff, counsel for Defendants

and to the Honorable Kenneth D. Bell.

SO ORDERED.

Signed: September 21, 2021

David S. Cayer

United States Magistrate Judge